

Gender Trouble in the Land of the Nile: Transgender Identities, the Judiciary and Islam in Egypt

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Abstract

The paper provides a socio-political context analysis to outline Al-Azhar's discourse on transgender identities and its influence on law and policy in Egypt. Transgender identities in Egypt represent an issue governed by Islamic Sharia more than anything else. Scholars at Al-Azhar, Egypt's highest Islamic authority, viewed transgender identities as a danger to the fabric of society if not regulated. Thus, in the 1980s, several Fatwas were issued to examine the compatibility of transgender identities with Sharia. These Fatwas were mostly concerned with the criteria that should exist to allow people to undergo surgical and hormonal interventions to change their sex. Initially, judicial opinions reviewed the issue of transgender identities independently of those Fatwas. However, since late 2000s, judicial opinions shifted to be more aligned with Sharia on the matter. Apart from judicial opinions, the Fatwas that emerged from the 1980s have also managed to influence the official health policy on transgender identities. To understand Al-Azhar's discourse on transgender identities, the author provides an analysis of three Fatwas issued by three different jurists in the 1980s and 1990s; examines the influence of that discourse on the current health policy providing medical care for transgender people; and provides a socio-political context analysis of judicial opinions in the 1980s and present-day to outline the reasons behind the judicial shift in attitude towards transgender identities.

Keywords

transgender rights – Islamic Sharia – Al-Azhar – health policy – judicial opinions – sex correction – sex change – Egypt

1 Introduction¹

While Egyptian society today may seem to reject any identity that challenges its binary system, historically, it has known gender ambiguity or non-binary gender expressions since ancient times.² Even after the Islamic conquests of Egypt, the society still maintained some familiarity with those identities as reflected in stories of the *mūḥanaṭīn*, the assigned at birth males with “effeminate” gender expression;³ and the lesser-known counterpart *Ġlūmyāt*, the assigned females at birth, who have a masculine gender expression.⁴ Indeed, contrary to some scholars’ beliefs, non-binary gender expressions continued during and after the British colonization of Egypt (1882–1922).⁵ Egyptian society knew the *Ḥawal*, men who took the traditional female gender role of belly dancers in the mid to late 19th century;⁶ *Ḥosnġya*, the “effeminate” same-sex male sex workers, who existed from the early 20th century until the 1940s and were known to gather at the Eiffel coffeeshop in Attaba Square in downtown Cairo.⁷ Egyptian media also covered stories of people with non-binary gender expressions, such as Ibrahim Al-Gharby (d. 1926), the “pimp emperor”, who was born a man and expressed themselves in an effeminate way, dressing like a woman, wearing jewelry, and using makeup even when conducting official matters with police, public prosecution, or other government entities;⁸ Abbas Hassan Ibrahim or Hamida like they called themselves in a news article

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- 1 For the purpose of this article, Sharia refers to the legal opinions given by Islamic scholars in Egypt influencing policy and law and other aspects of Egyptian state and society.
 - 2 Michael Dirda, ‘The Story of Egypt: A Look at a Gender-Bending Society Where Women Could Rule’, *The Washington Post*. WP Company, 21 September 2016. https://www.washingtonpost.com/entertainment/books/the-story-of-egypt-a-look-at-a-gender-bending-society-where-women-could-rule/2016/09/21/c7ef045c-7b4d-11e6-beac-57a4a412e93a_story.html.
 - 3 Saqer Salmarrī, ‘Identities of a Single Root: The Triad of the Khuntha, Mukhannath, and Khanith,’ *Women & Language* 41 (1) (2018).
 - 4 Hassan Shanat, ‘al-ġazal fi al-ġawari al-ġulamīyāt’ [Love poetry in the ġulamīyāt] 4 December 2017, <https://hshanat.com/%D8%A7%D9%84%D8%BA%D8%B2%D9%84-%D9%81%D9%8A-%D8%A7%D9%84%D8%AC%D9%88%D8%A7%D8%B1%D9%8A-%D8%A7%D9%84%D8%BA%D9%84%D8%A7%D9%85%D9%8A%D8%A7%D8%AA/>.
 - 5 Chels Chang, “Colonization of Gender: From Tradition to Modern Day,” *Scot Scoop News*, 15 December 2021. <https://scotscoop.com/colonization-of-gender-from-tradition-to-modern-day/>.
 - 6 Karin van Nieuwkerk, *A Trade like Any Other: Female Singers and Dancers in Egypt*, Austin: University of Texas Press, 2008.
 - 7 Nayzy Hatata, Mohamed, *al-mawsū’a al-’alāmya li al-inḥīrīfāt al-ġīnsīa, al-muġalad al-ḥamis wa al-saġys* [The International Encyclopedia of Sexual Deviations, Fifth and Sixth Parts] (Dar Al-Nahda Al-Arabya Publication House, 2001).
 - 8 Nora Noralla, ‘Ibrahim El-Gharaby: The Pimp Emperor’, *Cairo 52 Legal Research Institute*, 16 June 2021. <https://cairo52.com/ibrahim-el-gharaby-the-pimp-emperor/>.

published in 1930, describing a man who lives, dress and acts like a woman;⁹ Fatma, who underwent “sex change” surgery in 1947 and later used the name Ali and inspired the 1954 *Al-Anesa Hanfy* about a sexist man who discovers that he is a woman and undergoes surgeries to reflect that.¹⁰

It is important to note that “sex change” was used during this period as a catchall term to describe any person who changes their sex, whether transgender or intersex.¹¹ Egyptian researcher Yasmin Hassan published a study in 2009 stating that sex reassignment surgeries for intersex people were first introduced in Egypt in the 1920s.¹² Thus, it is likely that the “sex change” surgeries the media reported on then were for intersex people and not transgender people.¹³ Non-binary gender expressions started to slowly disappear post-mid-1950s, as the Egyptian state took a more active role in governing morality in society and people's private life. This morality conflicted with those expressions, as the state focused on promoting a binary social system.¹⁴

On the other hand, Islamic jurisprudence (*Fiqh*)¹⁵ has always emphasized a cis binary system in its discourse, as scholars believe that each sex has a unique set of gender roles attached to them in divorce, prayer, inheritance, work, and other aspects.¹⁶ Even with intersex people, known as *Khunsa* in *Fiqh*, Islamic jurists engaged with the issue with great effort to try to fit intersex

9 Article from *al-Dunia al-Musawwara* magazine, 20 April 1930.

10 Al Mogaz, ‘kānat Fatima wa asbaḥat Ali ... bi al-ṣuwar narwi qisat ḥayat al-batala al-ḥaqiqiya li film al-anisa Ḥanfy’ [She was Fatma and now she is Ali, telling the story of the true hero of the movie Al-Aansa Hanfy] *Al Moghaz*, 14 September 2020, <https://www.elmogaz.com/638601> (accessed 13 March 2023).

11 Intersex people are individuals born with sex characteristics that vary from what is typical for female and male bodies. In contrast, Transgender people are individuals whose gender expression/identity differs from the one they were assigned at birth.

12 Amira, Abdessalam, “amaliyāt tashīḥ al-jins ḍar, ūra diniya wa ‘ilmiya wa insāniya’ [Sex reassignment surgeries are medical, scientific and religious necessity] *Al-Youm Al-Sabaa*, 20 February 2009, <https://www.youm7.com/story/2009/2/20/72628/عمليات-تصحيح-الجنس-ضرورة-دينية-وعلمية-والإنسانية> (accessed 13 March 2023).

13 For the purpose of this article, transgender is limited to binary transgender people who wish to receive gender-affirming health to affirm their gender identity and wish to receive legal gender recognition to reflect their new gender identity on their official documents.

14 Nora Noralla, ‘Elkarakhana: History of Sex Working in Modern Egypt between Legalization and Criminalization’, *Cairo 52 Legal Research Institute*, 16 June 2021. <https://cairo52.com/2020/11/05/elkarakhana-eng/>.

15 *Fiqh* is an Arabic term derived from the root word *faqīḥa*, meaning “deep and comprehensive understanding.”

16 Masoumeh Velayati, ‘Gender and Muslim Families’, in Constance L. Shehan (ed.), *Encyclopedia of Family Studies*, (London: Wiley Blackwell, 2016). DOI: 10.1002/9781119085621.wbefs353.

people into the binary system, issuing numerous *Fatwas*¹⁷ discussing how an intersex person can be more female or male.¹⁸ Any gender identity outside this binary system was naturally labeled sinful, even if tolerated by society or the political elite.¹⁹ Thus, in the 1980s, as sex change treatments for transgender people were becoming more accessible globally, Islamic jurists in Egypt, Saudi Arabia, and Iran were concerned that transgender people would demolish their centuries-old binary system and sought to study the issue.²⁰ Jurists were especially concerned about regulating the matter, so people would not only transition out of free will but of necessity only. All Fatwas agreed that being transgender is a mental illness that has to be “cured.” In Iran, sex reassignment surgery (SRS) was allowed as an attempt to make transgender people fit into the accepted social heteronormativity.²¹ While in Egypt, Al-Azhar’s²² jurists concluded that transgender people should be denied access to those treatments. They believed transgender identities is only a mental illness that should be “cured” with nothing more than therapy.²³ Both Fatwas, even if they disagreed on the “cure,” did agree that transgender people must be forced to fit one way or another into the socially accepted binary.

Initially, Al-Azhar did not manage to enforce this interpretation on other branches of government, as its role was still weakened after a decades-long secular role under President Gamal Abdel Nasser (d. 1970). During the Nasserist era (1956–1970), policies were enacted to marginalize Al-Azhar’s socio-political

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- 17 Fatwa is a legal opinion giving by an Islamic jurist (Imam) through the interpretation of different sources of Sharia, most notably Qur’an and Hadith.
- 18 Al-Hamd Al-Adny, Rafaat. ‘al-aḥkam al-šar‘iya fi al-muḥnat’ [Fiqh Ruling on the Khuntha] First Part. Gamaa El Kotb El Islamiya. <https://ketabonline.com/ar/books/13141/read?part=1&page=1&index=819489> (accessed 13 March 2023).
- 19 Nahad, Hamid, ‘al-tḥanut fi aḥd al-naby (ṣ), dirāsa tārihiya’ [Khuntha in the Period of the Prophet, Historical Analysis] <https://www.ikliljournal.com/index.php/iklil/article/view/48>, (accessed 13 March 2023).
- 20 Mehrdad Alipour, ‘The Nexus between Gender-Confirming Surgery and Illness: Legal-Hermeneutical Examinations of Four Islamic Fatwas’, *Journal of Middle East Women’s Studies* 18 (3) (2022): 359–386.
- 21 Zaharin, A.A.M. and Pallotta-Chiarolli, M., ‘Countering Islamic conservatism on being transgender: Clarifying Tantawi’s and Khomeini’s fatwas from the Progressive Muslim Standpoint’, *International Journal of Transgender Health* 21 (3) (2020), 235–241, <https://doi.org/10.1080/26895269.2020.1778238>.
- 22 Al-Azhar founded in 972 AD is considered to be one of the oldest Islamic schools of Fiqh and is currently Egypt’s highest Islamic authority.
- 23 Nora Noralla, ‘Sunni Islamic Jurisprudence, Sex Reassignment Surgery and Transgender Rights’, *OpenDemocracy*, 13 December 2021. <https://www.opendemocracy.net/en/north-africa-west-asia/sunni-islamic-jurisprudence-sex-reassignment-surgery-and-transgender-rights/>.

role, turning it into nothing more than a government entity like any other.²⁴ However, Al-Azhar started to gain more political power in the post-Nasser era, as the country's political identity moved from a model based on secularism and socialism to a more Islamic and capitalist one.²⁵ The social identity was also transforming as Islam became more important to the regular Egyptians, especially as more Egyptians immigrated to the Islamist Gulf, where conservative Islamic ideologies such as *Wahhabism*²⁶ were dominant, for a better living in the 1980s and 1990s, which led to a demographic shift in Egypt as more Egyptians became religious.²⁷ Thus, by the 2000s, Al-Azhar had reinstated its role in Egyptian politics and managed to lobby the medical syndicate to ban sex-change treatments for transgender people.²⁸ The Egyptian judiciary was soon to be influenced by Al-Azhar's discourse on the matter when they started to ban legal gender recognition for transgender people citing Sharia in cases in the 2010s.²⁹

The paper provides an in-depth analysis of Al-Azhar's modern discourse on "sex change treatments" and its lasting legacy on policies and judicial opinions in Egypt, through analyzing the 1980s Fatwas from a socio-political perspective and outlining its negative impact on transgender people in Egypt today. The paper is divided into three sections: the first examines the evolution of Al-Azhar discourse on transgender identities and provide records of three influential Fatwas issued in the 1980s and 1990s; the second analyzes the influence this discourse had on medical policy; and the third looks into various judicial opinions on the issue from the 1980s to present day, to analyze the judicial discourse and the influence Al-Azhar had on this discourse. It is important to note that in current Egyptian policies, and judicial and religious opinions,

24 Malika Zeghal, 'Religion and Politics in Egypt: The Ulema of al-Azhar, Radical Islam, and the State (1952–94)', *International Journal of Middle East Studies* 31(3) (1999): 371–99.

25 Ibid.

26 Wahhabism is a fundamentalist Islamic ideology most common in Saudi Arabia that advocates for the rejection of any Islamic theology and philosophy developed after the death of the Prophet Muhammad and calls for strict adherence to the letter of the Koran and hadith (the recorded sayings and practices of the Prophet).

27 Amira Elmasry, 'Egyptian Migrations to the Gulf: Dreams and Lived Realities', *Egypt Migrations*, 29 July 2022. <https://egyptmigrations.com/2022/07/29/egyptian-migrations-to-the-gulf/>.

28 Nora Noralla, 'A Discriminatory System Killed a Transgender Man in Egypt', *Human Rights Watch*, 10 November 2021. <https://www.hrw.org/news/2021/11/10/discriminatory-system-killed-transgender-man-egypt>.

29 Ahmed Dabash, 'The Egyptian Constitution and Transgender Rights: Judicial Interpretation of Islamic Norms', 2019 (preprint), https://www.researchgate.net/publication/336927596_The_Egyptian_Constitution_and_Transgender_rights_Judicial_Interpretation_of_Islamic_Norms/citations.

the terms “reassignment, “correction,” and “affirming” are used to indicate the treatments for intersex people that they deem acceptable, while “sex change” is used to describe treatments for transgender people which are still debated if it should be allowed or not.³⁰ The paper opts to use the term “sex change treatments” as used in Egyptian policies to reflect the reality of the situation for transgender people in Egypt and how outdated Egyptian policies are and not to confuse it with the terminology they use for intersex people.

2 Al-Azhar Discourse on Transgender Identities

The visibility of transgender people increased globally in the 1980s as sex change treatments became more accessible and the medical discourse evolved to accept Sex Reassignment Surgeries (SRS) as a possible “cure” for transgender people. Faced with what they considered a new phenomenon in Islam, scholars of Al-Azhar started examining the issue by practicing *Ijtihad* (analogy)³¹ and issued several Fatwas on the matter starting in 1981.³² The Fatwas were primarily concerned with the regulation of accessing sex change treatments, as scholars worried that without regulations, those medical treatments could destroy the fabric of society. Scholars were especially concerned with the criteria allowing individuals to undergo sex change treatments, worried that the accessibility of the treatments would lead to chaos, as people could change their sex as they please.³³

Pathologizing transgender identities was a common practice in the 1980s when those Fatwas were issued. Discussions on transgender identities were mainly focused on treating it as a mental illness with possible cures, to maintain

30 Nora Noralla, ‘Sunni Islamic Jurisprudence, Sex Reassignment Surgery and Transgender Rights’, *OpenDemocracy*, 13 December 2021. <https://www.opendemocracy.net/en/north-africa-west-asia/sunni-islamic-jurisprudence-sex-reassignment-surgery-and-transgender-rights/>.

31 *Ijtihad* (analogy) in Islamic fiqh denotes the connection of something without a text to its judgment by another textual matter with a judgement by virtue of a shared cause between the two.

32 Jakob Skovguard-Peterson, ‘Sex Change in Cairo: Gender and Islamic Law’, *The Journal of the International Institute* 2(3) (1995), <https://quod.lib.umich.edu/j/jii/4750978.0002.302?view=text;rgn=main>.

33 M. Alipour, ‘Transgender Identity, The Sex-Reassignment Surgery Fatwās and Islāmic Theology of a Third Gender’, *Religion and Gender* 7 (2) (2017): 164–179. <https://doi.org/10.18352/rg.10170>.

the socially accepted gender binary.³⁴ The medical community debated the cures, as some advocated for allowing surgeries and hormonal treatment as a treatment for transgender people, while others disagreed, advocating for conversion therapy and psychiatrist interventions.³⁵ In the 1980s, the notion of conversion therapy was still popular not only for transgender people but everyone who falls under the LGBTQ+³⁶ umbrella. It was only later that conversion therapy was deemed a harmful practice in some countries.³⁷ However, the practice is still widespread in Egypt and Middle Eastern countries. Many people, including medical professionals and religious leaders, advocate for it as a “cure” for being LGBTQ+.³⁸

This debate was echoed in Egyptian Fatwas, especially the second one issued by Islamic scholar Muhammad Sayyid Tantawi³⁹ (d. 2010) in 1988 on the case of Sally Mursi, a transwoman medical student at Al-Azhar university. Al-Azhar’s medical experts and the medical syndicate’s experts denounced Sally and her surgeries, citing the medical discourse advocating for conversion therapy.⁴⁰ Meanwhile, when the case reached the public prosecution office, the judicial forensic medical authority (FMA) and medical experts from Cairo University concluded that Sally’s treatments were correct, citing that the medical discourse advocating for surgical and hormonal treatments for transgender people.⁴¹ Thus, Islamic jurists did consult medical experts to reach their

34 Amets Suess Schwend, ‘Trans Health Care from a Depathologization and Human Rights Perspective’, *Public Health Reviews* 41 (3) (2020). <https://doi.org/10.1186/s40985-020-0118-y>.

35 D. C. Haldeman, ‘Introduction: A History of Conversion Therapy, from Accepted Practice to Condemnation’, in D. C. Haldeman (ed.), *The Case against Conversion “Therapy”: Evidence, Ethics, and Alternatives* (American Psychological Association, 2022), pp. 3–16. <https://doi.org/10.1037/0000266-001>.

36 LGBTQ+ stands for Lesbian, Gay, Bisexual, Transgender, Queer and other sexual or gender identities outside cis hetero binary.

37 Stephen Vider and David S. Byers, ‘Curing Homosexuality vs Psychiatry: A History of Conversion Therapy’, *Time*, 12 February 2015. <https://time.com/3705745/history-therapy-hadden/>.

38 Avi Asher Shapiro and Maya Gebeily, ‘LGBT+ Conversion Therapy: Banned on Facebook, but Thriving in Arabic’, *Reuters*, 3 June 2021. <https://www.reuters.com/article/us-mideast-lgbt-conversion-idUSKCN2DF0S9>.

39 Muhammad Sayyid Tantawy (referred to as Shaikh Tantawy) was Egypt’s grand Mufti between 1986 and 1996.

40 Aisya Aymanee M. Zaharin and Maria Pallotta-Chiarolli, ‘Countering Islamic Conservatism on being Transgender: Clarifying Tantawi’s and Khomeini’s fatwas from the Progressive Muslim Standpoint’, *International Journal of Transgender Health* 21(3) (2020): 235–241.

41 Jakob Skovgaard-Peterson, ‘Sex Change in Cairo: Gender and Islamic Law’, *The Journal of the International Institute* 2(3) (1995), <https://quod.lib.umich.edu/j/jii/4750978.0002.302?view=text;rgn=main>.

Fatwas and were highly influenced by the pathologizing concepts of the time, treating transgender people as people with mental illness. Instead of following the medical discourse allowing treatments for transgender people, Islamic jurists opted to follow medical discourse advocating for conversion therapy for transgender people and not surgical and hormonal treatments.⁴²

In Sally's case and in subsequent cases and *Fatwas*, transgender identities were portrayed in media and in discourses made by conservative officials and Islamic jurists as a new Western phenomenon that would destroy the Islamic morals of Egyptian society.⁴³ Being wary of "Western" cultures and practices was a common theme during the 1980s and 1990s in Egypt, the "Western" label was often used to denounce current practices as part of a greater Western conspiracy against Egyptians. Egypt in the 1980s was going through what is known as *Infitah* (openness), a policy where Egypt underwent a drastic socio-economic change opening the door for Western investment and culture.⁴⁴ Conspiracy theories about Western products were common, such as Pepsi being a Zionist plot against Muslims, standing for "Pay Every Penny to Save Israel."⁴⁵

Islamic jurists were also wary of the increased influence of Western media and culture on society and even denounced new medical inventions. For example, Al-Azhar scholar Muhammad Metwalli al-Sha'rawi (d. 1998) forbade some modern medicines, such as kidney dialysis and donor transplant, declaring them sinful.⁴⁶ At the same time, other *Fatwas* of the time declared it a sin to travel abroad to countries where Muslims do not rule, unless in current conditions such as trade.⁴⁷ Other jurists warned against the increasing Western influence in Egypt on youth, as they worried that it would make Egypt lose

42 Farhan Hasmady and Mat Jubri Shamsuddin, "The Rule of Sex Change: An Evaluative Study in Light of the Maqāṣid al-Sharī'ah", *International Journal of Fiqh and Usul al-Fiqh Studies* 2 (2) (Dec. 2018): 50–58.

43 Ibid.

44 Tamir Moustafa, 'Conflict and Cooperation Between the State and Religious Institutions in Contemporary Egypt', *International Journal of Middle East Studies* 32(1) (2013): 3–22.

45 "Egyptian Cleric Hazem Abu Ismail Calls to Boycott Pepsi: Name Stands for 'Pay Every Penny to Save Israel'", *Middle East Media Research Institute (MEMRI)*, 4 May 2009. <https://www.memri.org/tv/egyptian-cleric-hazem-abu-ismail-calls-boycott-pepsi-name-stands-pay-every-penny-save-israel>.

46 Kamal Tabikha, 'Egypt Looks into Expanding Organ Donations despite Cultural Barriers', *The National*, 29 September 2022. <https://www.thenationalnews.com/mena/egypt/2022/09/29/egypt-looks-into-expanding-organ-donations-despite-cultural-barriers/>.

47 Bint Ali Al-Madyfer, Abir, 'al-safar al-ḥaḡli bi bilād ḡayr al-muslimin' [The Necessary Travels to non-Muslim Countries] *Sharia and Law Journal at Tanta University* 35 (2020): 778–839, <https://doi.org/10.21608/mksq.2020.78415>.

its Islamic identity.⁴⁸ Thus, by portraying transgender identities as a Western foreign concept, they fed into the conspiracy mania during the *Infatih* period, as transgender people became part of the Western conspiracy narratives in society.

In the following section, I provide records of three *Fatwas* issued by three different Al-Azhar scholars: Gad al-Haq (d. 1996),⁴⁹ Muhammad Sayyid Tantawy, *Ataya Saqar* (d. 2006).⁵⁰ The three *Fatwas* were issued in 1981, 1988, and 1997 respectively, and have since then influenced law, judicial opinions, and medical policy regarding transgender people not only in Egypt but also across the Sunni Islamic world.⁵¹

2.1 *Gad Al-Haq Fatwa in 1981*

On the 27 June 1981, Al-Azhar received an inquiry from a Malaysian transgender individual regarding the Islamic ruling of undergoing sex change operations. The individual submitted the inquiry upon the request of the Malaysian Islamic Research Center, which was not able to provide a ruling on the matter independently.⁵² Gad Al-Haq, the grand Imam of Al-Azhar at the time issued the following *Fatwa* on the matter:

Usama ibn Sharik says: “A bedouin came to the Prophet and said: ‘O, Messenger of Allah, can you cure?’ And He said, ‘Yes, for Allah did not send a disease without sending a cure for it, knowing it from His knowledge ...’ This [Hadith] is told by Ahmad [ibn Hanbal]. Another version: “Some Bedouins said: ‘O, Messenger of Allah, can you cure?’. And He spoke: ‘Yes. Allah’s servants can cure themselves, for Allah never gave a disease without providing a cure or medicine for it, except for one disease.’ They asked, ‘O, Prophet of Allah, what disease is that?’ He said, ‘old age.’” Told and authenticated by Ibn Mageh, Abou Dawood, and Al-Tormuthey (*Muntaqi l-Akhbar Wa Sharhan* by Neel Al-Awtar by Al-Shawkani L.8 P.200), and from Gaber who said: “The holy prophet of

48 Saad Eddin Ibrahim, ‘Egypt’s Islamic Activism in the 1980s’, *Third World Quarterly* 10 (2) (1988): 632–57. <http://www.jstor.org/stable/3992660>.

49 Gad al-Haq Ali Gad al-Haq was the Grand Imam of Al-Azhar from 1982 to 1996.

50 Ataya Saqar is a renowned Al-Azhar scholar and was a member of Al-Azhar Fatwa Center and Al-Azhar Islamic Research Center in the 1990s.

51 Nora Noralla, ‘The Middle East Has an Anti-Transgender Bills Problem’, *The New Arab*, 22 July 2022. <https://english.alaraby.co.uk/features/middle-east-has-anti-transgender-bills-problem>.

52 Egyptian Dar Al-Ifa Fatwas, subject (1288) ‘ğirahāt taḥwyl al-rağul ilā al-mar’a wa bil ‘aks ġa’iza li al-ğarūra’ [Sex change operations for from a man to a woman and vice versa is permissible only for necessity]. *Fatwa* by: Gad Al-Haq, <https://shamela.ws/book/432/3271>.

Allah sent a doctor to Ubayy ibn Ka'bKa'b to treat him. The doctor cut off a vein from him, then cauterized it" This [Hadith] is told by Ahmed [ibn Hanbal] and Muslim [ibn al-Hajjaj] (Previous reference P.204)

Another [Hadith] from Arfaga who lost his nose in Al-Kulab War: "My nose was injured in Al-Kulab War, so I made a new nose from paper (sliver), but it became stinky. So, the holy prophet ordered me to replace it with a nose made from gold" (Authenticated by Al-Tormuthey and explained by Ibn Al-Arabi Al-Maleki L.7 P.269–270 first edition. The Egyptian Bahya Press in Al-Azhar in the year 1350 AH–1931 AD). Ibn' Arabî explained this Hadith, saying that what is forbidden (gold) can be permitted when necessary for medical treatment.

Another Hadith from Urwa ibn al-Zubayr, says that Zainab bint Abi Salama told him that: "Umm Salamah told her that the Holy Prophet came into her house while a Mukhannath (effeminate man) was inside the house. The Holy Prophet says there is no sin on those born Mukhannath, and there is an obligation on those to seek to remove it. Those who insist on doing it are reprehensible." (Authenticated by Al-Bukhari, with the explanation of Irshad Al-Sari, by Al-Qastalani, vol. 7, p. 1460. sixth edition. The Amiri Press in Bulaq 1305 AH with Al-Nawawi's commentary on Sahih Muslim in the chapter on expelling imitating women from homes).

From Fath Al-Bari explained from Al-Bukhari (L.9 P.273. Edition printed in 1348. The Egyptian Bahya Press in Al-Azhar in Al-Azhar) from Ibn Hagar Al-Asqalani's Chapter on effeminate men: "Curses on those adopt feminine talking and walking is only for those who intentionally do it out of enjoyment and insist on it although being obligated to abandon this cursed behavior; if they are naturally born with this attitude then they have to leave it this addiction gradually. Those born Khuntha are not blamed for their attitude, although they should attempt to leave their effeminate ways of walking and talking after receiving treatment for it, if possible, even if gradually; if they do not do so without an excuse, then they are to blame." Al-Tubri inferred that the Holy Prophet did not ban the Mukhannath from entering women's rooms until he heard the Mukhannath describe the women's looks and bodies in detail; then, he forbade him from entering. This means there is no blame on those born this way.

The jurisprudence evolving from these [Ahadith] and others that talked about medication allows for sex change surgery for a man to transition into a woman and vice versa, only when a doctor concludes that there are biological necessities to do so to reveal what is hidden from female or male organs. These surgeries are permissible as they reveal

hidden organs to treat a physical ailment, which can only be treated with this kind of surgery, as mentioned in Ubayy ibn Ka'bKa'b [Hadith], where a part of his body was cut to treat him.

This is also supported when reading the explanations from Al-Qastalani and Al-Asqalani, who concluded that the Mukhannath should seek treatments to remove their feminine attitude. Furthermore, what Fath Al-Bari has said proves that this obligation is by getting treatment, and this treatment may be with surgery, as it might be the best solution. However, the surgery is not allowed out of mere wish, instead only of medical and physical necessity. Those who do the surgery without these conditions are subject to the [Hadith] told by Al-Bukhari from Anas, who said: "The prophet cursed those men who are effeminate (Muhkannathen), and women who imitate men (Mustrijlat) and ordered them to be expelled from your homes. The prophet removed one person, and Omar removed another." Told by Ahmad [ibn Hanbal] and Al-Bukhari (Muntaqi l-Akhbar Wa Sharhan by Neel Al-Awtar by Al-Shawkani L.6 P.192)

To sum it up, it is permissible to do the surgery to reveal what is hidden from male or female organs, and it is even an obligation once the doctor concludes that this is the best treatment to reveal those organs. However, the surgeries are forbidden if performed out of a mere desire to change sex from female to male or from male to female. And praise *Allah* who created and equated, and destined and guided. *The holy Allah* is the all-knower.⁵³

2.2 *Shaikh Tantawy's Fatwa in 1988*

Al-Tantawy's Fatwa is considered to be the most known fatwa on sex change/reassignment operations, as it concerns the very high-profile case of Sally Mursi, an Al-Azhar university medical student who underwent a male-to-female sex change surgery.⁵⁴ Al-Azhar university expelled the student and denounced the surgery she underwent as un-Islamic. The Medical Syndicate, which was primarily led by the Islamist Muslim Brotherhood⁵⁵ submitted letter number

53 Translated from Arabic by the author.

54 Mohamed Jean Veneuse, 'The Body of the Condemned Sally: Paths to Queering anarca-Islam', *Anarchist Developments in Cultural Studies* 2010(1) (2010). <http://theanarchistlibrary.org/library/mohamed-jean-veneuse-the-body-of-the-condemned-sally-paths-to-queering-anarca-islam.html>.

55 The Muslim Brotherhood is a political traditional Sunni Islam group founded in Egypt in 1928 and advocates a return to the Qur'an and the Hadith as guidelines for a healthy modern Islamic society and the implementation of Sharia as the source of law.

483 to inquire about the Islamic ruling on the matter. On the 8th of June 1988, Al-Tantawy issued his now infamous *Fatwa*:

To the honored general secretary of the Doctors' General Syndicate. This is an answer to the Syndicate's letter number 483 of May 14, 1988, asking for the opinion of religion on the matter of a student of medicine at the al-Azhar university, who has been subjected to a surgical operation (removing his male organs) in order to turn him into a girl.

We find that Usama ibn Sharik tells: "A bedouin came to the Prophet and said, 'O, Messenger of Allah, can you cure?' And He said, 'Yes, for Allah did not send a disease without sending a cure for it, knowing it from His knowledge ...'" This [Hadith] is told by Ahmad [ibn Hanbal]. There is another version: "Some bedouins said, 'O, Messenger of Allah, can you cure?'. And He spoke. 'Yes. Allah's servants can cure themselves, for Allah never gave a disease without providing a cure or a medicine for it, except for one disease.' They asked, 'O, Prophet of Allah, what disease is that?' He said, 'old age.'" This version is related by ibn Maja abu Da'ud, at-Tirmidhi, and others. (Muntaqi l-Akhbar wa Sharhan nayl al-Awtar, v. 8, p. 200, and Fath al-Bari bi Sharh Sahih al-Bukhari, by al-Asqalani, v. 9, p. 273, in the chapter on those who imitate women)

As for the condemnation of those who by word and deed resemble women, it must be confined to one who does it deliberately [tacahhada dhalika], while one who is like this out of a natural disposition must be ordered to abandon it, even if this can only be achieved step by step. Should he then not comply, but persist [in his manners], the blame shall include him, as well – especially if he displays any pleasure in doing so.

The person who is by nature a hermaphrodite [mukhannath khalqi] is not to be blamed. This is based on [the consideration that] if he is not capable of abandoning the female, swinging his hips in walking and speaking in a feminine way, after having been subjected to treatment against it, [he is at least willing to accept that] it is still possible for him to abandon it, if only gradually. But if he gives up the cure with no good excuse, then he deserves blame.

At-Tabari took it as an example that the Prophet (Allah bless him and grant him salvation) did not forbid the hermaphrodite from entering the women's quarters until he heard him giving a description of the woman in great detail. Then he prohibited it. This proves that no blame is on the hermaphrodite for simply being created that way.

That being so, the rulings derived from these and other noble Ahadith on treatment grant permission to perform an operation changing a man into a woman, or vice versa, as long as a reliable doctor concludes that

there are innate causes in the body itself, indicating a buried [matmura] female nature, or a covered [maghmura] male nature, because the operation will disclose these buried or covered organs, thereby curing a corporal disease which cannot be removed, except by this operation.

This is also dealt with in a Hadith about cutting a vein, which is related through Jabir: "The Messenger of Allah sent a physician to abu ibn Kacb. The physician cut a vein and burned it." This Hadith is related by Ahmad [ibn Hanbal] and Muslim. What supports this view is what al-Qastallani and al-Asqalani say in their commentaries on it: "This means that it is incumbent upon the hermaphrodite to remove the symptoms of femininity." And this is further sustained by the author of Fath al-Bari who says "... having given him treatment in order to abandon it ..." This is a clear proof that the duty prescribed for the hermaphrodite can take the form of a treatment. The operation is such a treatment, perhaps even the best treatment. This operation cannot be granted at the mere wish to change sex with no clear and convincing corporal motives. In that case it would fall under that noble Hadith which al-Bukhari relates through Anas: "The Messenger of Allah cursed the hermaphrodites among the men and the over-masculine women, saying 'expel them from their houses', whereupon the Prophet himself (Allah bless him and grant him salvation) expelled one, and Umar expelled another one." This Hadith is related by Ahmad and al-Bukhari.

To sum up: It is permissible to perform the operation in order to reveal what was hidden of male or female organs. Indeed, it is obligatory to do so on the grounds that it must be considered a treatment, when a trustworthy doctor advises it. It is, however, not permissible to do it at the mere wish to change sex from woman to man, or vice versa. Praise be to He who created, who is mighty and guiding. From what has been said the answer to what was in the question will be known. Praise be to Allah the Highest.⁵⁶

2.3 *Ataya Saqar's Fatwa*

In May 1997, Al-Azhar received a general inquiry regarding the permissibility of sex change treatments in Islam. Ataya Saqar provided a short Fatwa citing Gad Al-Hag's 1981 *Fatwa*:⁵⁷

56 Translated by Jakob Skovgaard-Petersen, 'Sex Change in Cairo: Gender and Islamic Law', *The Journal of the International Institute* 2(3) (1995). <https://quod.lib.umich.edu/j/jii/4750978.0002.302?view=text;rgn=main>. Original version in Arabic available in Dar al iftaa, volume 118, pp. 290–292.

57 Egyptian Dar Al-Ifa Fatwas, volume 10, p. 3501, fatwa by: Ataya Saqar, <http://islamport.com/w/ftw/Web/953/4478.htm>.

Masculinity has its organs, the most important of which are the penis, testicles, and what is attached to them, like the spermatic cord and prostate. And the dominant signs of puberty for males include attraction to the female, deepening of the voice, growth of beard hair, and tiny busts. And femininity has its organs, the most important of which are the vagina, uterus, ovary, and what is attached to them, like the fallopian tube. And the dominant signs of puberty for females include attraction to the male, softness of voice, non-growth of beard hair, and the menstrual cycle.

A person can be born with organs of both sexes called intersex. And they could have dominant male organs and have them emphasized using surgery and other methods to become a male who marries a woman and might have children. Or they could have dominant female organs emphasized using surgery and other methods to become a female who marries a man and might have children.

As for a man with all of the designated systems for this sex, having feminine tendencies is only a mental illness that does not turn him into the female nature. These tendencies may be fake by choosing to act like a female, placing it in the group of forbidden acts according to the [Hadith]: One sex who acts like the other is cursed. And they may be compelling and must be treated using what is needed, and the treatment could succeed or fail, all determined by the will of Allah almighty. The same goes for masculine tendencies in a woman with all of the designated systems for her sex, which are nothing more than symptoms that do not turn her into the male nature, making it a forbidden act if it's a choice and a need for treatment if it's compelling.

This and an order were sent to The Egyptian Dar Al-Ifta, which Sheikh Gad Ali Gad Al-Haq answered on the 27th of June 1981. In summary, Islam has ordered us to medicate, which includes performing surgeries according to a [Hadith] told by a Muslim: that the holy prophet has sent a doctor to Abi Bin Ka'b, so he cut a part of him and sealed it, and that he has forbidden intentional and artificial feminization as told by Al-Bukhari and a Muslim, then he decided that performing surgery to turn a man into a woman or a woman into a man is allowed, only if the doctor is certain of the existence of natural reasons for it inside the body, which are hidden signs of being a female or hidden sign of being a male, then it becomes the treatment of a physical defect that can only be removed using surgery.

And what proves this is the explanation of Al-Qastalani and Al-Asqalani for the [Hadith], where they pointed to the necessity of removing the signs of femininity, which can be done by using treatment and surgery, as it may be the best solution.

But this surgery is forbidden if it is just a desire to change without having clear and dominant physical signs. The verdict is then determined by the holy [Hadith] told by Al-Bukhari about Anas, who said: “The holy prophet of Allah has cursed men who perform femininity and women who perform masculinity,” and said: “Kick them out of your homes,” therefore the prophet has kicked someone out, and Omar has kicked someone out.

So, it is allowed to perform the surgery to release what is hidden from the male or female members. If that is the case, it is a duty since it is considered treatment once the doctor has confirmed that. And the same is forbidden for just a desire to change sex from female to male or from male to female.⁵⁸

2.4 *Reading the Fatwas*

While Tantawi’s Fatwa is the most popular of the three, Gad Al-Haq Fatwa is the one that forms the foundation on which the entire modern Sunni jurisprudence on transgender identities across the Sunni world builds. There was some confusion on whether the Fatwas allowed or disallowed sex change treatments for transgender people. It did not help that the three scholars used outdated and somewhat complicated language, such as *Khuntha* and *Mukhannathun*, to discuss the matter. The word transgender was not used throughout the text. Instead, the Fatwas label them as men who act effeminate and women who act masculine. The confusion led to a short-lived debate among scholars and authorities on how to interpret the Fatwas, as some believed that Fatwas permitted sex change operations for transgender people, and others believed the opposite.⁵⁹

The debate stemmed from one core concept in Islamic jurisprudence, that Allah does not create an illness without a cure and that there is an obligation for Muslims to seek medical treatments when possible. Thus, since transgender people are ill, they should seek whatever possible cure, such as sex change surgeries; Tantawi’s Fatwa was issued for Sally, a transwoman diagnosed with “psychological hermaphroditism”; thus, she was a sick person who sought medical treatment just like the Fatwa obligated Muslims to do.⁶⁰ However, to interpret the Fatwa as for transgender people undergoing sex change surgery

58 Translated from Arabic by the author.

59 Usep Abdul Matin, Asep Jahar, Asmawi Asmawi Year, ‘The Care Ethic of Ṭanṭawī’s Fatwā (Legal Opinion) on Sally Muḥammad ‘Abdullah’s Sex Change (Male to Female) in Egypt’, *Proceedings of the 3rd International Colloquium on Interdisciplinary Islamic Studies, ICIIIS 2020, 20–21 October 2020*, Jakarta, Indonesia (2020). ICIISEAI, DOI: 10.4108/eai.20-10-2020.2305173.

60 Ibid.

neglects one key concept the Fatwas introduced: one cannot change their sex out of mere wish, but only when there is a biological and medical necessity. Consequently, the Fatwas do permit SRS, but only for intersex people. In contrast, sex change treatments are labeled as sinful because it leads to a change in one's sex out of the person's desire and not a biological necessity.⁶¹

This interpretation in the Fatwa is the more prominent one among current Al-Azhar scholars, and this interpretation is the one that is used across the Sunni world to design intersex and transgender policy. In 2016, Dr Ali Gomaa⁶² issued an updated Fatwa to clarify those old Fatwas, using more modern language, such as gender identity disorder (GID), to ban sex-change treatments for transgender people and allow SRS only for intersex people.⁶³

Thus, if this is the interpretation of the Fatwas, what is the logic behind it? The three scholars used the same reasoning to interpret Islamic rulings regarding sex change treatments. The first concept is the already discussed above concept of Allah does not create an illness without a cure. The Fatwas obligates intersex and transgender people to seek treatment to live within the religiously and socially accepted binary. Intersex people should undergo surgeries to "reveal what is hidden of their organs," while transgender people should seek therapy to accept their biological sex.

Secondly, the Fatwas discuss if it is sinful to "imitate the other sex" or, in simpler words, to be transgender. For this, the Fatwas point out that being transgender is not a sin as it can be something outside the person's control. However, it is sinful for a transgender person to insist on being transgender and not seek the permitted treatment. Interestingly, this logic is also used on intersex people, who may be considered sinners if they know their condition and do not seek surgeries to correct it. This reflects the scholar's fixation on making everyone outside the binary, in their opinion, fit in the binary.⁶⁴

Thirdly, two concepts that the Fatwa did not directly mention but were mentioned in the subsequent debates about their interpretation: body ownership

61 Fiqh judgments on medical issues and treatments for first year students of the Medical, Science, Nursing and Dentistry schools. Al-Azhar University, Dept of Law and Sharia. 2018/2019. Second Unit, Sex Change Chapter, p. 60.

62 Ali Gomaa is an Islamic jurist who served as the eighteenth Grand Mufti of Egypt (2003–2013).

63 Fatwa on changing one's sex for having gender identity disorder, Ali Gomaa, 7 November 2016 (in Arabic). <https://www.draligomaa.com/index.php/الفتاوى/item/2005-الجنس-لعلاج-اضطراب-الهوية-الجنسية>.

64 Nora Noralla, 'Sunni Islamic Jurisprudence, Sex Reassignment Surgery and Transgender Rights', *OpenDemocracy*, 13 December 2021. <https://www.opendemocracy.net/en/north-africa-west-asia/sunni-islamic-jurisprudence-sex-reassignment-surgery-and-transgender-rights/>.

and unwarranted change in Allah's creation. Some interpretations of Sharia view bodies as gifts from Allah, a gift we are obligated to take care of and present at its best on Resurrection.⁶⁵ A Hadith of the Prophet Mohamed says, "Man's feet will not move on the Day of Resurrection before he is asked about [...] and his body. How did he use it?"⁶⁶ Thus, the Fatwas place sex change treatments as a misuse and rejection of Allah's gift (the body). Allah's creation is considered perfect: "We have certainly created man in the best of stature (mold)."⁶⁷ Any unwarranted change of Allah's creation is regarded as a sin in Islam, with some schools of thought considering tattoos and even makeup sinful acts that change Allah's creation. For the fatwas, transgender people do not have a valid reason to change Allah's creation because, unlike intersex people, they don't have a biological necessity for it.⁶⁸

3 Al-Azhar's Influence on Health Policy

A new medical term emerged influenced by Al-Azhar discourse on sex change operations, *tshīh al-ġns* or sex correction was coined to indicate the medical treatments permissible in Islam. Inversely, the term *tġīr al-ġns*, or sex change has since been used to indicate the medical treatments that are considered to be a sin.⁶⁹ Those terms have since been used by policymakers, lawmakers, medical professionals, and jurists to make a distinction between medical care for transgender people which is now defined as sex change, and medical interventions on intersex people which is now defined as sex correction or affirming or reassignment, with only the latter being permitted in Islam.⁷⁰

Subsequently, the term sex correction made its first official policy appearance in 2003, when the Minister of Health amended the Medical Syndicate's Code of Ethics to ban Egyptian doctors from performing sex change operations.

65 Kiarah Aramesh, 'The Ownership of Human Body: An Islamic Perspective', *Journal of Medical Ethics and History of Medicine* 2 (4) (2009). PMID: 23908718; PMCID: PMC3713940.

66 Riyad as-Salihin 407, <https://sunnah.com/riyadussalihin:407>.

67 English translation surah At-Tin Verse 4 Page 262. Available online at: <https://surahquran.org/english-aya-4-sora-95.html>.

68 Fiqh judgments on medical issues and treatments for first year students of the Medical, Science, Nursing and Dentistry schools. Al-Azhar University, Dept of Law and Sharia. 2018/2019. Second Unit, Sex Change Chapter, p. 67.

69 Nora Noralla, 'Sunni Islamic Jurisprudence, Sex Reassignment Surgery and Transgender Rights', *OpenDemocracy*, 13 December 2021. <https://www.opendemocracy.net/en/north-africa-west-asia/sunni-islamic-jurisprudence-sex-reassignment-surgery-and-transgender-rights/>.

70 Ibid.

The same amendment stipulated the creation of a sex correction review committee within the Medical Syndicate to review applications from those who wish to undergo the surgery and to ensure that they are truly intersex not transgender:

Doctors are strictly prohibited from performing sex change operations. Sex correction is only permissible after receiving approval from the review committee in the Syndicate. Surgeries will only be conducted after two years of psychiatric evaluation and hormonal treatment and after conducting a full examination of hormones and the chromosomal map of the applicant.⁷¹

The review committee consists of two psychiatrists, a genetics expert, an andrologist, an endocrinologist, a medical head of the committee, and a representative from Al-Azhar. However, the committee was very dysfunctional from the beginning, as its members were volunteers and it held no legal or executive powers to enforce its decisions, and was riddled with conflicts between medical and religious opinions.⁷² Doctors on the committee requested that Al-Azhar's position should be relaxed to include individuals suffering from GID.⁷³ However, Al-Azhar maintained its position, insisting on its established opinions regarding the matter which rejected treating any mental disorder with surgery.⁷⁴

In 2014, the conflict escalated and resulted in the suspension of the committee's work, after Al-Azhar's representative refused to sign off on any cases, accusing the medical doctors of referring people with GID to surgery.⁷⁵ In 2017, the committee resumed operations after an agreement was reached, giving Al-Azhar's representative veto powers to reject any case that is not compatible with Sharia in their view. In 2020, Dr Osama Abd El-Hay, head of the

71 Medical Syndicate Code of Ethics, Article 43, 5 September 2003, <http://alex-doctors.com/wp-content/uploads/2014/08/medical-ethics-law.pdf> (in Arabic).

72 Nora Noralla, 'A Discriminatory System Killed a Transgender Man in Egypt', *Human Rights Watch*, 10 November 2021. <https://www.hrw.org/news/2021/11/10/discriminatory-system-killed-transgender-man-egypt>.

73 Gender identity disorder or gender dysphoria is a term that describes a sense of unease that a person may have because of a mismatch between their biological sex and their gender identity.

74 Ibid.

75 Ahmed Dabash, 'The Egyptian Constitution and Transgender Rights: Judicial Interpretation of Islamic Norms', 2019 (preprint), https://www.researchgate.net/publication/336927596_The_Egyptian_Constitution_and_Transgender_rights_Judicial_Interpretation_of_Islamic_Norms/citations.

review committee indicated in a statement to the media outlet “ABC News” that between 2014–2017 zero cases were approved for GID, with all cases being approved due to “physical needs”.⁷⁶

Due to this policy, doctors who may still wish to provide sex change treatments outside the Medical Syndicate review committee system risk not only disciplinary actions but also criminal prosecution. Doctors can have their medical license revoked and can face criminal liability under Article 244 of the Penal Code for causing “a permanent disability” to their patients.⁷⁷ In 2010, Dr Mahmoud Al-Atifi’s hospital in upper Egypt was shut down and several doctors were arrested for providing sex change treatments to a transgender patient who did not have the required paperwork from the review committee. Thus, official sex change treatments for transgender people were made *de-facto* illegal under this policy.⁷⁸

This had a catastrophic impact on transgender people in Egypt, as access to sex change treatments became limited to dangerous, ill-equipped, and expensive underground illegal clinics. Sex change operations are reported to cost anywhere from 7,000 EGP (445 USD) to 25,000 EGP (1,560 USD), in a country where 72.60% of people earn less than 5.50 USD per day.⁷⁹ Doctors operating in those clinics often lack the expertise or training to perform such surgeries. Transgender patients have often stated that they were prematurely discharged after surgery and often suffered complications from surgeries.⁸⁰ Those complications can be deadly. In 2021, a 26-year-old transgender man bled to death after he was prematurely discharged after suffering from a botched sex change surgery in an underground clinic. There are no avenues of accountability in such incidents since those surgeries often have no paper trail.⁸¹

76 Maggie Michel and Mariam Fam, ‘In Egypt, Transgender Activist Fights Battle on Many Fronts’, *ABC News Network*, 27 March 2020. <https://abcnews.go.com/International/wireStory/egypt-transgender-activist-fights-battle-fronts-69829327>.

77 Mohamed Ahmed Al-Mashahy, ‘*al-mas’ūliya al-ġina’iya al-našī’a min ‘amalyāt al-taḥawūl al-ġinsy*’ [Criminal Liability of Sex Reassignment Surgery], *IUG Journal of Sharia and Law Studies*. (2022). <https://journals.iugaza.edu.ps/index.php/IUGJLS/article/view/11748>.

78 Nora Noralla, ‘The Middle East Has an Anti-Transgender Bills Problem’, *The New Arab*, 22 July 2022. <https://english.alaraby.co.uk/features/middle-east-has-anti-transgender-bills-problem>.

79 Nora Noralla, ‘A Discriminatory System Killed a Transgender Man in Egypt’, *Human Rights Watch*, 10 November 2021. <https://www.hrw.org/news/2021/11/10/discriminatory-system-killed-transgender-man-egypt>.

80 Nora Noralla, ‘Tough Territory for Transgender People in the Middle East and North Africa’, *Human Rights Watch*, 8 April 2022. <https://www.hrw.org/news/2022/04/08/tough-territory-transgender-people-middle-east-and-north-africa>.

81 Ibid.

4 Judicial Opinions on Transgender Identities

Judicial authorities in Egypt have had the opportunity to examine several issues related to transgender identities. These issues include the right to education, legal gender recognition, and doctors' criminal liability for performing sex change surgeries. Egypt's laws are mute on the issue of transgender identities, which created a legislative vacuum that was filled by several judicial opinions since the 1980s. Judicial authorities have worked to provide an interpretation of the law and constitution in an attempt to regulate the matter. However, judicial opinions are not consistent and often conflicted with one another, as judges and prosecutors allowed their own socio-religious bias to interfere in their interpretation of the law regarding transgender identities.⁸²

While earlier judicial opinions on Sally's case were somewhat understanding and consulted medical professionals who recognized that modern medicine considers sex change treatments as a possible "cure" for GID, in later cases, the judiciary was not so understanding of transgender identities, especially after Al-Azhar managed to get the medical syndicate to ban doctors from providing sex change treatments for transgender patients and came out on top in the power struggle in the Sex Correction Review Committee.

Perhaps an excellent example of the judiciary shifting its position on transgender identities is the case of Ayden, a transgender man who was denied legal gender recognition after he failed to prove that he is intersex and not transgender in 2016 after the Court ruled that undergoing sex change treatment is against Islamic Sharia. The Ayden case is not unique however, as other transgender people were denied legal gender recognition starting from the late 2000s for being transgender and not intersex. The Courts often refer these cases to the FMA to conduct tests, including chromosome maps, to determine if the individual is intersex; if not, the individual is denied legal gender recognition and left to live in legal limbo with a gender identity not matching their official papers.⁸³

Thus, from Sally to Ayden, there has been a great shift in the judicial opinions on transgender identities from the 1980s to the 2010s. This shift is symbolic of the greater influence Al-Azhar has been having in Egyptian politics since the mid-1970s. Thus, to understand how Al-Azhar's discourse managed to

82 Nora Noralla, 'Confused Judiciary & Transgender Rights: Inside the MENA Region's Case Law on Legal Gender Recognition', *Manara Magazine*, 21 August 2022. <https://manara-magazine.org/2022/03/confused-judiciary-transgender-rights-inside-the-mena-regions-case-law-on-legal-gender-recognition/>.

83 For example, see judgment number 3867/66jY issued on 27 January 2013.

influence judicial opinions and health policy on the matter, one must understand the socio-religious dynamics from the 1980s to the present day.⁸⁴ Anwar Sadat, Egypt's president from 1970 until 1981, labeled himself as "the faithful president" and sought to increase the role of Islam and, subsequently, that of Al-Azhar in Egyptian politics. This was a shift from the former president Nasser (d. 1970), who turned Al-Azhar into nothing but a governmental agency and practiced a more secular political agenda.⁸⁵ Under Sadat, Islam became a more prominent player in Egyptian politics, as he improved relations with fundamentalist Islamist regimes in the Gulf; allowed Al-Azhar to receive foreign donations from Saudi Arabia; increased the role of Islamist groups in universities in combating the influence of Nasserist groups; and in 1980, amended the Constitution to make Sharia one of the main sources of legalization in the country.⁸⁶

In 1981, Sadat was assassinated by fundamentalist army officers. The threat of fundamentalist terrorist groups in the 1980s threw the Egyptian government into the arms of Al-Azhar. Sadat's successor Mubarak (d. 2020) realized the need for religious legitimacy in the government's ongoing fight with fundamentalists in the country. This need helped increase the influential role of Al-Azhar in politics. A win-win relationship was established under President Hosni Mubarak (1981–2011). Under his period, the regime would receive religious legitimacy, and Al-Azhar will be more independent and allowed to influence some of the government policies.⁸⁷ Socially, there was a demographic shift in the 1980s and 1990s, with the decay of the government-sponsored employment sector in favor of a free-market economy and the westernization of the Egyptian economy. Many Egyptians sought better employment in neighboring Gulf countries. Societies in the Gulf were, unlike in Egypt, more conservative with fundamentalist beliefs like *Wahhabism* being the norm in countries like Saudi Arabia. Egyptians who immigrated to the Gulf often came back carrying some of those fundamentalist beliefs, which led to the rise of a religious middle class in Egypt.⁸⁸

84 Ahmed Amin, 'Analyzing Al-Azhar's Role in Egyptian Politics', *SIYASAL: Journal of Political Sciences* 29(1) (2020). DOI: 10.26650/siyasal.2020.29.1.0058.

85 Ibid.

86 Ibid.

87 Tamir Moustafa, 'Conflict and Cooperation Between the State and Religious Institutions in Contemporary Egypt', *International Journal of Middle East Studies* 32(1) (2020):3–22.

88 Nora Noralla, 'Elkarakhana: History of Sex Working in Modern Egypt between Legalization and Criminalization', *Cairo 52 Legal Research Institute*, 16 June 2021. <https://cairo52.com/2020/11/05/elkarakhana-eng/>.

Thus, since the 1980s, Egyptian politics and society have become increasingly influenced by Islam and religious actors. The judiciary started to gradually become more conservative as it moved to interpret the newly introduced Article 2 of the Constitution to mean that the basic fundamental principles of Islam should guide judges when examining cases.⁸⁹ However, this was not enough for fundamentalists, who demanded that every law in Egypt be reformed according to Islamic Sharia, something the Supreme Constitutional Court rejected, deeming it too radical.⁹⁰ The judiciary looking for an ally to curb the fundamentalist's litigation effort relied on Al-Azhar as its source of what they called "moderate Islam;" this can be considered the second alliance between Al-Azhar and the State after the initial one between the government and Al-Azhar.⁹¹ Judges and prosecutors gradually started to publicly incorporate Islam as part of written and unwritten rules guiding their work. In 2017, the state's council deputy chair stated, "Here in Egypt, public order is Islam."⁹² While the public prosecution office issues statement on cases quoting the Qur'an and Hadith and saying that people should follow the principles of Islam to guide their daily life.⁹³ The judiciary was also becoming more active in governing the morality of the society, taking on a moral authority to regulates the livelihood of Egyptians.⁹⁴

This new moral role would reflect negatively on transgender cases, as socio-religious views influenced judicial opinions on the issue deeming it

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- 89 Clark B. Lombardi, 'Islamic Law as a Source of Constitutional Law in Egypt: The Constitutionalizing of the Sharia in a Modern Arab State', *Columbia Journal of Transnational Law* 81 (1998): 81–123.
- 90 Eman Rashwan, 'The Egyptian Supreme Constitutional Court's Interpretation of the Islamic Sharia as a Constitutional Check: Stalling the Radical Islamization of the Egyptian Legal System', *IACL. IACL-IADC Blog*, 29 June 2021. <https://blog-iacl-aidc.org/2021-posts/29-6-21-the-egyptian-supreme-constitutional-courts-interpretation-of-the-islamic-sharia-as-a-constitutional-check-mrbng>.
- 91 Mohammad Fadel, 'Judicial institutions, the Legitimacy of Islamic State Law and Democratic Transition in Egypt: Can a Shift toward a Common Law Model of Adjudication Improve the Prospects of a Successful Democratic Transition?', *International Journal of Constitutional Law* 11(3) (2013): 646–665.
- 92 Amr Ezzat, 'Egyptian Law Fosters Its Own Islam ... and Reproduces It', *Legal Agenda*, 15 September 2020. <https://english.legal-agenda.com/egyptian-law-fosters-its-own-islam-and-reproduces-it/>.
- 93 Nora Noralla, 'Politics, Society and Public Morals: How Does a 'Debauchery' Charge Service All?', *TIMEP*, June 21, 2022. <https://timep.org/commentary/analysis/politics-society-and-public-morals-how-does-a-debauchery-charge-service-all/>.
- 94 Mona Oraby, 'Law, the State, and Public Order: Regulating Religion in Contemporary Egypt', *Law & Society Review* 52 (3)(2018): 574–602. <http://www.jstor.org/stable/45093929>.

immoral.⁹⁵ To put this in the context of transgender identities, the civil jurists who examined Sally's case in the 1980s were the product of the Nasserist secular era. As such, they issued judgments away from Al-Azhar's discourse on the matter. By the 2000s, the religious influence on politics and society has also reached the judiciary, as the jurists who were educated in the 1980s and 1990s started sitting on the bench and allowed their socio-religious bias to influence judicial judgments.⁹⁶ This is reflected in Ayden's case, where the judges directly quoted Al-Azhar's position on transgender identities as a ground to reject the case. Furthermore, after Sally's doctors were acquitted from any wrongdoing in her case, Al-Azhar lobbied to ensure that the sex change surgeries would be made illegal and to deter doctors from performing those surgeries. Thus, they have used their increased influence on politics to pressure the government to amend the Medical Syndicate's Code of Ethics to ban sex change operations.

The following section will discuss in-depth various judicial opinions issued from the 1980s to present day on transgender identities in Egypt. These opinions reflect the aforementioned attitude change towards transgender identities among civil jurists. Initially, civil jurists did not allow Al-Azhar discourse to influence their judgment on the matter. Instead, they relied on consulting medical experts to reach a judgment. This somewhat tolerant attitude towards transgender identities would gradually shift, with more recent opinions citing Al-Azhar discourse in their judgments and rejecting transgender cases based on Sharia and morality of society.⁹⁷

4.1 *Criminal Liability of Doctors*

In 1988, after Sally successfully underwent her sex change surgery, she was the subject of not only Al-Tantwai's *Fatwa* but also heavy media coverage as well as a medical and criminal investigation of the doctors who performed the surgery.⁹⁸

Sally was transgender and not intersex and didn't have a "biological reason" to undergo the surgery. Thus, the Medical Syndicate together with Al-Azhar

95 Nora Noralla, 'Politics, Society and Public Morals: How Does a "Debauchery" Charge Service All?', *TIMEP*, 21 June 2022. <https://timep.org/commentary/analysis/politics-society-and-public-morals-how-does-a-debauchery-charge-service-all/>.

96 Ibid.

97 Ahmed Dabash, 'The Egyptian Constitution and Transgender Rights: Judicial Interpretation of Islamic Norms', 2019 (preprint), https://www.researchgate.net/publication/336927596_The_Egyptian_Constitution_and_Transgender_rights_Judicial_Interpretation_of_Islamic_Norms/citations.

98 Jakob Skovgaard-Petersen, 'Sex Change in Cairo: Gender and Islamic Law', *The Journal of the International Institute* 2(3) (1995). <https://quod.lib.umich.edu/j/jii/4750978.0002.302?view=text;rgn=main>.

viewed the issue as nothing but the deformation of an able male body to spread homosexuality and other immoral ideals. The surgeon who performed the surgery was Christian, which added an extra layer of tension to the issue, as the Medical Syndicate and Al-Azhar viewed this as an attack on a Muslim young man.⁹⁹

The Medical Syndicate, which was dominated by the Islamist Muslim Brotherhood, conducted an internal investigation into the matter and issued disciplinary decision number 3/1988 terminating the surgeon's medical license and giving the anesthetist a fine of 200 EGP. Later, the Syndicate organized a conference which stated that this issue is not only a medical issue but also a moral one, as this case represents an attack on the morals, customs, and the greater good of the Egyptian society.¹⁰⁰

Simultaneously, Al-Azhar submitted a petition number 21/1988 to the public prosecution office to criminally investigate the doctors. The prosecution office decided to refer the case to the FMA to examine Sally and the treatments she received to determine if there was any criminal liability in her case or not. The medical examiners consulted relevant international literature on the matter and used the term "psychological hermaphroditism" to explain the mental disorder Sally suffered from, and concluded that while Sally was biologically a man, psychologically she was not. The examiners concluded that there was no wrongdoing in Sally's case, as the doctors did act according to the rules of the medical profession and did not inflict any psychical damage on Sally.¹⁰¹ The medical examiners also conducted an anal examination on Sally to determine if she did have anal intercourse before her sex change or not, and found that she was not involved in any intercourse before undergoing the surgery.¹⁰²

Upon receiving the medical examiner's report, the public prosecution office decided to dismiss the petition, concluding that the doctors who performed the surgery were not criminally liable. After the dismissal of the petition, the doctors submitted judicial petition number 34/1988 to Cairo's Court of Appeals to dismiss the Medical Syndicate's disciplinary decision taken against them. In June 1991, the Court issued a judgment concluding that the doctors did not violate any of their medical duties by performing the surgeries on Sally. The Court revoked the Medical Syndicate's disciplinary decision and ordered

99 Ibid.

100 Gamal Amr Abd El-Hamed, Mohamed, *'al-fasl al-tany : mašrū'yat 'amalīat al-tahūl al-ġnsy: al-mas'ūliya al-ġinā'iya 'an 'amliat taḥaūl al-ġns'* [Chapter Two, the Legality of Sex Change Operations – Criminal Liability for Sex Change Operations] Cairo, Dar Al-Nahrda Al-Arabya Publication Center, 2019.

101 Ibid.

102 Ibid.

the restoration of the surgeon's license and to provide both the surgeon and the anesthetist with fair compensation for the damage they suffered because of the disciplinary decision.¹⁰³

This positive opinion is reflective of the judicial discourse pre-2003. After the Medical Syndicate's Code of Ethics amendment in 2003, it became legal to investigate and discipline doctors who perform sex change operations.

4.2 *Right to Education: Sally's Battle with Al-Azhar University*

After the dismissal of the criminal investigation, Sally managed to receive legal gender recognition¹⁰⁴ from the Civil Registry Authority. However, despite legally being a woman, Al-Azhar university decided to expel her for committing an immoral act which is gender transitioning. Another issue was the fact that Al-Azhar university is segregated by gender, thus, Sally would have to be admitted to a female medical school and not a male one, something Al-Azhar strictly refused as they viewed Sally as a man. Sally's long legal battle with Al-Azhar university on her right to continue her studies started in 1989 and is still going to this day.

Sally started her legal battle with Al-Azhar university in 1989 when she submitted judicial petition number 5432/42 JY to the Administrative Court requesting to be readmitted to the Medical School at Al-Azhar university. Initially, the Court rejected Sally's request, citing that she willfully underwent the surgery despite not having any biological need for it. The Court added that even before the surgery, Sally has committed several immoral acts like cross-dressing that are not compatible with studying in an Islamic university.

However, the Court also referred the case to the Egyptian State Commissioners (ESC)¹⁰⁵ to provide its legal opinion on the matter at hand. The ESC delivered its legal opinion disagreeing with the Court and finding that Sally should be readmitted to Al-Azhar university. In June 1991, a retrial took place and the Court re-examined the case after receiving the ESC's report. The Court ruled that Sally has the right to be readmitted to Al-Azhar university, as her acts were linked to an illness and not to immorality. The Court cited the ESC report in its judgment which found that Sally is now treated as a woman in all official capacities after receiving legal gender recognition, thus, Sally cannot

103 Judgment Number 34/1988. Cairo Court of Appeals, 7 December 1989.

104 Legal gender recognition is a process, in which a transgender person receives new official documents e.g. passport, or national ID to reflect their gender identity.

105 ESC is a consultative judicial body within the Administrative Courts system tasked with assisting the judges in ruling on cases by providing impartial judicial opinions and interpretation of the law on issues that are not legally clear.

be viewed as a man anymore and should be granted entry to the female medical school.¹⁰⁶

Al-Azhar university refused to implement the Court's judgment which led to a second judgment affirming Sally's right to receive education in the university in 1999 in petition number 4019/50JY. The Court stated that:

After changing her sex and issuing new documents to reflect her new sex, the plaintiff now holds a legal position within the law as a woman and should be treated accordingly. The plaintiff has proved that society and authorities alike are now treating her as a woman. Thus, Al-Azhar university must readmit her to continue her studies in the female medical school, as the right to education is a constitutional right that cannot be limited or denied by any entity.¹⁰⁷

In a legal maneuver, Al-Azhar university appealed the decision citing the immoral character of Sally's acts after providing audio-visual evidence that Sally became a belly dancer after transitioning, a profession that they considered to be un-Islamic and not compatible with studying at an Islamic university. In June 2000, the Court issued its judgment number 54/1487 overturning the previous judgment and accepting that evidence of immorality of Sally as a ground for her to be expelled from Al-Azhar university.¹⁰⁸

In 2000, Sally appealed to the Supreme Administrative Court, which is considered to be the Court of last resort in the Administrative Courts System. In 2006, the Court issued its judgment number 9907/48 JY, which concluded that Sally suffered from GID, a mental disorder that is hard to treat past puberty without surgical intervention. Thus, Sally had the right to seek medical treatment for her condition. The Court added that Sally is now a woman and has the full legal rights as a woman, which includes the constitutional right to education. The Court ended Sally's long legal battle finding that Al-Azhar by refusing to readmit her as a student is violating Sally's constitutional rights.¹⁰⁹ Despite the judgment being final and legally binding, Al-Azhar university ignored it and refused to implement it to this day.

106 Judgment Number 5432/42 JY, Egyptian Administrative Court, 2 July 1991.

107 Judgment Number 4019/50 JY, Egyptian Administrative Court, 28 September 1999.

108 Judgment Number 1487/54 JY. The Egyptian Administrative Court. 20 June 2000.

109 Judgment Number 9907/48 JY. The Supreme Egyptian Administrative Court, 15 June 2006.

4.3 *Legal Gender Recognition between Sharia and Law*

Technically transgender people can apply to receive legal gender recognition directly from the Civil Register Authority. However, in the absence of any regulatory framework, receiving legal gender recognition is arbitrary in Egypt. Those who are denied their legal gender recognition request have no option but to apply through a judicial process.¹¹⁰ In 2014, Ayden, a transgender man, applied for legal gender recognition from the Civil Registry Authority, but the application was rejected. In 2014. The same year, he filed petition number 80419/68 JY to the Administrative Court to appeal the Civil Registry Authority's rejection decision.¹¹¹

The Court's record shows that the plaintiff suffers from GID and started seeing a psychiatrist in 2007. In 2013, the Medical Syndicate's review committee approved him to undergo female-to-male sex change surgeries. In 2013, the plaintiff underwent his final surgery in a private medical center in Cairo. The Court referred the plaintiff to the FMA to determine his true sex and whether he underwent a sex change or a sex correction surgery. The FMA's report concluded that:

The plaintiff's chromosomal map indicates that he is a woman, however, other his hormonal and physical appearance is that of a man. The plaintiff suffered from GID and underwent surgical and hormonal interventions to change his sex from a female to a male.¹¹²

The Court examined all the documents provided by the plaintiff and the FMA and concluded that the plaintiff underwent a sex change surgery which is prohibited in Sharia, thus, the plaintiff's request to change his papers is rejected. The Court stated that:

Currently, there is a legislative vacuum on the issue at hand. In the absence of law, the Court shall resort to the Constitution for guidance. Article 2 of the Constitution stipulates that Sharia's principles are one

110 Nora Noralla, 'Tough Territory for Transgender People in the Middle East and North Africa', *Human Rights Watch*, 8 April 2022. <https://www.hrw.org/news/2022/04/08/tough-territory-transgender-people-middle-east-and-north-africa>.

111 Nora Noralla, 'Confused Judiciary & Transgender Rights: Inside the MENA Region's Case Law on Legal Gender Recognition', *Manara Magazine*, 21 August 2022. <https://manara-magazine.org/2022/03/confused-judiciary-transgender-rights-inside-the-mena-regions-case-law-on-legal-gender-recognition/>.

112 Forensic report number 47/2014. The Judicial Forensic Medical Authority, 9 February 2014.

of the main sources of legalization in the country, thus, the Court finds it applicable to use Sharia to judge on the matter. When examining the Fatwas on the topic, we find that scholars have prohibited people from undergoing sex change operations and permitted only sex correction ones for biological needs. The plaintiff violated Sharia by undergoing sex change surgery while he was born a healthy-bodied female and had no need for surgery. Even if he suffered from GID, he should have treated it mentally and not physically.

The plaintiff stated he received approval from the Medical Syndicate before undergoing surgery, however, the Medical Syndicate does not have the legal powers to issue such decisions, which makes its decisions on the matter invalid [...] Personal freedom is protected in the Constitution and national law; however, it is not absolute and is governed by not only Sharia but also accepted social standards. The Court calls on the legislative assembly to perform its duties and to issue a law regulating those kinds of surgeries. Those surgeries should be allowed only when it is compatible with Sharia and the law should be amended to reflect that.¹¹³

The plaintiff appealed to the Supreme Administrative Court, and in 2019 the Court issued a judgment stating that it does not have the expertise to judge on the matter. The Court decided to send an official request to the Supreme Council of Egyptian Universities to assist it with the formation of a committee to review the matter. The Court asked for the committee to include an Andrologist, a Venereologist, a Psychologist, a Clinical Geneticist and whoever else can provide expertise on the matter.¹¹⁴ The Court shall issue a final judgment on the matter after receiving a detailed report from this expert committee. To this day, no final judgment has been issued and no reports were made of the committee submitting its final report.

However, Ayden's case is not unique, as, in 2013, the Administrative Court issued a similar judgment denying a transgender woman legal gender recognition for violating Sharia by undergoing a sex change surgery.¹¹⁵

113 Judgment Number 80419/68 JY, Egyptian Administrative Court, 24 January 2016.

114 Judgment Number 43057/62 JY, Supreme Egyptian Administrative Court, 07 September 2019.

115 Judgment Number 3867/66 JY, Egyptian Administrative Court, 27 January 2013.

5 Thoughts for the Future

Many Islamic scholars, including some from Al-Azhar, claim that Islamic Sharia is a flexible and dynamic concept that should always be interpreted to reflect the “spirit of the present-day” and not only the old ways.¹¹⁶ Al-Azhar did change its stands on other controversial issues from the 1980s to modern days such as, through adopting a more progressive attitude toward child marriage,¹¹⁷ female genital mutilation (FGM),¹¹⁸ and recently, organ donation¹¹⁹ after death. In these three areas, Al-Azhar went from supporting child marriage and FGM to denouncing those practices, while donating organs went from a sinful act to a permissible one under some conditions.¹²⁰

Al-Azhar always claims that its change in attitude towards issues is genuine and is done to reflect the social development happening in Egypt. However, analysts see a correlation between politics and Al-Azhar’s shift of attitude. For example, Al-Azhar shifted its attitude toward FGM after the government started a large anti-FGM campaign in the 2000s. Genuine or under political pressure, the result remains the same, which is a more progressive religious discourse on those matters.¹²¹

Therefore, can this progressive change of attitude be replicated in transgender identities? Al-Azhar’s discourse on transgender identities craved an image into the Egyptian social consciousness of transgender people, an image of immoral, deviant people who are undergoing this surgery out of their lust

116 Kali Robinson, ‘Understanding Sharia: The Intersection of Islam and the Law’, *Council on Foreign Relations*, 17 December 2021. <https://www.cfr.org/backgrounder/understanding-sharia-intersection-islam-and-law>.

117 ‘Reforming Religious Discourse Would Curb Early Marriage in Egypt: Egyptian Human Rights Group’, *Ahram Online*, 28 March 2022. <https://english.ahram.org.eg/NewsContent/1/2/463658/Egypt/Society/Reforming-religious-discourse-would-curb-early-mar.aspx>.

118 Andoni Kampfner, ‘Female Genital Mutilations In Egypt: A New Frontier in the Struggle for Power, Influence and Authority among the State and Islamic Institutions’, Research paper in the course “Islam and Politics in a Changing Middle East” *Sciencespo Kuwait* (Spring 2016). https://www.sciencespo.fr/kuwait-program/wp-content/uploads/2018/05/KSP_Paper_Award_Spring_2016_SANTAMARIA-KAMPFNER_Andoni.pdf.

119 Sherine Hamdy, ‘The Organ Transplant Debate in Egypt: a Social Anthropological Analysis’, *Droit et Culture* 59 (2010): 357–365.

120 Kamal Tabikha, ‘Egypt Looks into Expanding Organ Donations despite Cultural Barriers’, *The National*, 29 September 2022. <https://www.thenationalnews.com/mena/egypt/2022/09/29/egypt-looks-into-expanding-organ-donations-despite-cultural-barriers/>.

121 Nora Noralla, ‘The One True Sharia: A Historical Background’, *Manara Magazine*, 19 November 2021. <https://manaramagazine.org/2021/11/the-one-true-sharia-a-historical-background/>.

for homosexuality and not because they need it. This social image has helped Al-Azhar in its endeavor to influence policy and judicial opinion on the matter.¹²²

However, in recent years, a social debate about the issue of transgender identities has increased due to the increased visibility of transgender people in media and society. Pathologizing is still at the core of how society views transgender people. However, Egyptians showed more tolerance towards transgender people who underwent sex change surgeries as long as they presented within the accepted social binary.¹²³

In 2020, the Egyptian actor Hisham Saleem received a lot of empathy and praise for his acceptance of his transgender son Noor.¹²⁴ In 2021, a transgender woman named Frida Ramadan took to social media to plead with the Minister of Education to assist her with receiving her pension after it was suspended due to her transition. The Minister of Education showed empathy for Frida and called for a greater social acceptance of transgender people who are just sick people receiving treatment like anyone else.¹²⁵

However, in 2021, Ahmed Al-Tayeb, the grand Imam of Al-Azhar issued a statement on Facebook two days after Transgender Day of Remembrance:

Allah created humans and fashioned them in the best possible form, and decreed that the universe run as per His judgement and will. Today we are seeing an obsession with unwarranted sex change, which not only goes against basic human nature but is unanimously rejected by all divine religions. These are despicable attempts to alter Allah's creations and give in to desires under the false pretense of freedom.¹²⁶

122 Aya Nader, 'The Suffering of Egypt's Transgender Community', *Foreign Affairs*, May 30, 2017. <https://www.foreignaffairs.com/articles/egypt/2017-05-30/suffering-egypts-transgender-community>.

123 'Life as a Transgender Person in Egypt', *BBC*, 11 August 2015. <https://www.bbc.com/news/av/world-middle-east-33858627>.

124 Kamal Tabikha, "My Daughter Noura Is Now My Son Nour," Says Hesham Selim as He Comes out in Support of His Son's Transition', *NileFM*, 4 May 2020. <https://nilefm.com/entertainment/article/5582/-my-daughter-noura-is-now-my-son-nour-says-hesham-selim-as-he-comes-out-in-support-of-his-son-s-transition>.

125 'Transgender Woman Battles for "Dignity" in Conservative Egypt', *France 24*, 2 June 2021. <https://www.france24.com/en/live-news/20210602-transgender-woman-battles-for-dignity-in-conservative-egypt>.

126 Nora Noralla, 'Sunni Islamic Jurisprudence, Sex Reassignment Surgery and Transgender Rights', *OpenDemocracy*, 13 December 2021. <https://www.opendemocracy.net/en/north-africa-west-asia/sunni-islamic-jurisprudence-sex-reassignment-surgery-and-transgender-rights/>.

Al-Tayeb's statement can be seen as a reaffirmation of Al-Azhar's discourse on transgender identities. However, the word "unwarranted" is the key to any possible change in that discourse. The first step towards change in dealing with transgender identities in Egypt would be through considering GID as a valid reason to undergo sex change operations by Al-Azhar.

The medical discourse has already called for accepting GID as a ground for such operations, and this discourse has been slowly influencing social consciousness on the matter recently. Currently, the Egyptian Parliament together with Medical Syndicate is discussing a new medical liability law to replace the Syndicate's Code of Ethics. So far, several drafts have been discussed, and no final bill has been introduced for voting in Parliament. In what can be seen as a positive sign, all proposed drafts did not have any articles banning doctors from performing sex change operations for transgender people.¹²⁷

The path toward transgender rights in Egypt is still long and complicated, and it will most likely be decades until transgender people are treated equally to their cis counterparts in the country. However, if a final law is approved without including a ban on sex change operations, it will signal a positive change for transgender people in Egypt and a departure from the Al-Azhar involvement in their medical care. The Supreme Administrative Court will also have a chance to advance transgender rights in Egypt when finally issuing a judgment on the pending Ayden case. Al-Azhar will likely cling longer to its regressive stands on transgender identities. However, Al-Azhar changed its discourse on controversial like FGM after initial resistance; thus, reforming its discourse on transgender identities seems to be imminent.

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